

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT CLARKSBURG**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**Criminal Action No. 1:22-CR-60
(JUDGE KLEECH)**

LUIS RAUL NUNEZ,

Defendant.

SUPPLEMENTAL MOTION TO EXCLUDE GOVERNMENT EXHIBITS

Defendant, Luis Raul Nunez, by counsel, L. Richard Walker, First Assistant Federal Public Defender, files this supplement to his motion to exclude filed on November 3, 2022. [Document no 26]. In that motion Mr. Nunez moved to exclude all recorded telephone calls, including a call from June 28, 2022, involving an alleged admissions on the basis of late disclosure. After having the time to review all of the calls carefully, Mr. Nunez wishes to articulate additional specific grounds to exclude one of the phone calls, namely, the first of two calls from June 29, 2022, marked as Government Exhibit 22, and the associated transcripts marked as Government Exhibit 28. In support, the grounds are as follow:

The first call on June 29, 2022, is allegedly from Mr. Nunez to his sister Mirna. On November 10, 2022, the Government advised that there are statements by Mr. Nunez on this call establishing Mr. Nunez's consciousness of guilt for the attempted introduction of contraband on April 12, 2022, charged in Count One of the Indictment. This call is not relevant, and, therefore, not admissible, under FRE 401 and FRE 402,

because it does not contain conversations or comments by Mr. Nunez that tend to prove a material fact or a fact germane to the crime that is alleged to have occurred on April 12, 2022. Rather, there are conversations about a myriad of unrelated matters, such as making lunch, making a shake, milking cows, preparations for work, the staff at the prison, Home Depot, shoes, diet tips, and other common topics unrelated to drugs. To be sure, there are some conversations about borrowing and sending money and the need for Mr. Nunez to maintain good conduct in the prison, but these conversations are very vague and there is no suggestion that these conversations or comments relate to participation in a scheme to introduce contraband on April 12, 2022.

WHEREFORE, in addition to the grounds set forth in the motion to exclude filed on November 3, 2022, Mr. Nunez asks this Court to exclude the first call on June 29, 2022, between Mr. Nunez and the person alleged to be his sister Mirna.

Respectfully submitted,

LUIS NUNEZ

By Counsel

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CERTIFICATION OF SERVICE

I hereby certify that on November 10, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of West Virginia, which will send notification of such filing to the following CM/ECF user:

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